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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/173196

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 28, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on April 28, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly sought to discontinue the petitioner's Long Term Care (LTC) MA effective May 1, 2016, due to excess assets.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] ES Spec.  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. Prior to May 2016, she was certified or LTC MA, as a spousal impoverishment case. She receives benefits through an MA-related subprogram, Family Care.

2. The petitioner's case was due for an annual review in March 2016, as it had been open for one year. On her March renewal application, the petitioner listed available assets of \$57,226 for her husband residing in the community, and a \$489.55 asset (checking account) for herself. She also listed \$4,000 in EE savings bonds as assets in her name, but described them as unavailable.
3. The petitioner took money from her bank account and purchased the \$4,000 in bonds in February 2016. The bonds are normally not redeemable for at least one year.
4. The Department determined that the bonds were available assets. On March 24, 2016, the Department issued written notice to the petitioner advising that her LTC MA eligibility would be discontinued effective May 1, 2016. The savings bonds were listed as available assets for the petitioner. She then filed this appeal, and aid was continued pending this decision.
5. The petitioner's representative attempted to redeem the bonds through the TreasuryDirect website on April 22 and April 24, 2016. She was unsuccessful on both attempts. *See*, Exhibit E.

### **DISCUSSION**

An applicant for LTC/Elderly-Blind-Disabled MA has to satisfy nonfinancial and financial tests to be found eligible. The petitioner has passed the nonfinancial tests. The agency has concluded that she did not pass the asset test at her one year review that began in March 2016. A single person cannot have nonexempt assets exceeding \$2,000. Wis. Stat. §49.47(4)(b)3g; *Medicaid Eligibility Handbook (MEH)*, § 39.4.1, available at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. A married couple with a spouse in the community may have higher assets, but the assets in the institutionalized person's name that exceed \$2,000 must be transferred over to the spouse within one year. *Id.*, § 18.4.6.1.

If the \$4,000 in savings bonds were not available to the petitioner at the time of this 2016 annual review, her assets were under the \$2,000 limit, and she remains asset-eligible for LTC MA. The *MEH* instruction on availability echoes federal MA rules, and is as follows:

#### **16.2.1 Assets Availability Introduction**

An asset is available when:

1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
2. The owner has a legal right to the money obtained from sale of the asset, and
3. The owner has the legal ability to make the money available for support and maintenance, and
4. The asset can be made available in less than 30 days.

Consider an asset as unavailable if **either**:

1. The **member** lacks the ability to provide legal access to the assets, and
2. No one else can access the assets, and
3. A process has been started to get legal access to the assets.

**Or,**

When the owner or owner's representative documents that the asset will not be available for 30 days or more, and the process has been started to obtain the assets.

Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

*MEH*, § 16.2.1. Additional policy instruction is provided regarding availability of savings bonds:

#### **16.7.22 U.S. Savings Bonds**

Count the cash value of a U.S. Savings Bond unless it is unavailable. A bond is unavailable only if the Medicaid group proves it tried to cash the bond and was refused.

*MEH*, § 16.7.22.

In this case, the petitioner tried to cash the bonds twice in April 2016, and was refused. Redemption information on the TreasuryDirect website declares that savings bonds must be held for at least one year before they can be redeemed. *See*, Exhibits B, E. That information corroborates the testimony of the petitioner's representative that her efforts at redemption were thwarted. Accordingly, I conclude that the bonds are not currently available, and that discontinuance of the petitioner's LTC MA for excess assets was incorrect.

### **CONCLUSIONS OF LAW**

1. The \$4,000 in savings bonds purchased by the petitioner's representative in February 2016 were not an available resource to the petitioner at the time of her annual review.
2. The attempt to discontinue the petitioner's LTC MA benefits effective May 1, 2016, on an excess assets theory, was incorrect.

**THEREFORE, it is**

### **ORDERED**

That the petition is remanded to the agency with instructions to continue the processing of the petitioner's 2016 annual review by treating the \$4,000 in savings bonds as an unavailable asset. This action shall be taken within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

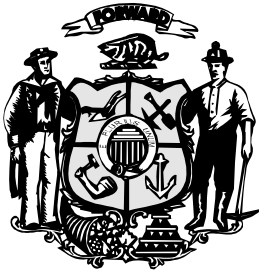
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 30th day of June, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 30, 2016.

Waukesha County Health and Human Services  
Office of Family Care Expansion  
Health Care Access and Accountability  
Attorney [REDACTED]